THE KANSAS COURT OF INDUSTRIAL RELATIONS

On January 24, nineteen days after the convening of a special session of the legislature called by Governor Henry J. Allen to deal with industrial disturbances, the state of Kansas put into effect the Industrial Court Act, which in terms of ultimates provides for the compulsory adjudication of industrial disputes. Declaring the operation of industries affecting food, clothing, fuel, and transportation to be impressed with a public interest and therefore subject to regulation, the Act creates a court which takes over the power and duties of the Public Utility Commission of the state and with additional authority has power to decide industrial disputes, to order employer and employees to work; and, if necessary, to take over and run such industries as prove disobedient and wilful, and to place all refractory individuals in jail.

The Kansas incident affords a field for close observation to a student of labor problems removed by the nature of the case from many of the immediate considerations which have caused certain groups to align definitely their support with one side and maintain a stubborn front. The Court of Industrial Relations of the state of Kansas is an experiment. Laboratory material will result. Whether the findings will be significant, or whether the experiment will be without special import in the history of the relations of labor to the state, is a question which cannot yet be answered with certainty.

Certain opinions may be ventured, however, as to the probable success of the Kansas line of approach, through considering: (*a*) the scope of the Act itself; (*b*) the situation in Kansas which discloses the motif of the legislation and the forces arrayed for and against it; and (*c*) certain difficulties of procedure and certain variables which may interfere with the carrying out of the experiment.

From the standpoint of expressing the apparent will of its authors, the Act is exceptionally well drawn; its content is clear, unmistakable. The legislation declares:

That the operation of industries, employments, etc., is "affected with a *public interest*" and therefore subject to supervision by the state "for the

purpose of preserving public peace, protecting the public health, preventing industrial strife, disorder and waste, and securing regular and orderly conduct of the businesses directly affecting the living conditions. . . . ."

That a Court of Industrial Relations be created, consisting of three judges appointed by the governor. The first judges appointed are to hold office for three, two, and one years respectively; thereafter the appointments are for a period of three years.

That the court upon its own initiative *may* interfere when it shall appear to the court that the controversy may endanger the continuity and efficiency of service.

That if it appears to the court the parties are unable to agree, it is *under duty* to interfere: (*a*) upon complaint of either party to the controversy; (*b*) upon complaint of any ten taxpayers of the community in which an industry is located; (*c*) upon complaint of the attorney-general of the state of Kansas.

That the court has power to summon all necessary parties, investigate, and make all necessary temporary findings and orders, and, after a hearing, to make findings, stating terms and conditions "upon which said industry, employment, utility, or common carrier should be thereafter conducted." Also, in case of limitation, or cessation of industry which seriously affects public welfare the court can take action to "take over, control, direct, and operate the industry."

Other outstanding features of the Act are the provisions declaring: the court may order changes in the matters of working and living conditions, hours of labor, rules and practices, and assure a reasonable minimum wage, or standard of living; the right of capital to a fair rate of return; the right of unions incorporated or unincorporated to bargain collectively and to be represented by men of their own choosing. Provision is made for appeal from decisions of the court to the Supreme Court, which shall put the appeal first upon its docket, thus avoiding delay, but the appeal must be made within ten days. After thirty days have elapsed, in the absence of appeal, the findings of the court are absolute and may be changed only by agreement of both of the parties with the consent of the court, or by order of the court, which will consider appeal for revision only after the parties have made a bona fide effort to conform to the decision for a period of sixty days and have found it to be unjust. The use of the strike, boycott, or picketing is forbidden to labor and employers may limit or cease operations in order to affect either the wages of the worker or the price of a commodity.

The penalty provision of the Act states that anyone guilty of violating the Act or any valid order of the Court of Industrial Relations shall be deemed guilty of a misdemeanor and subject to a fine of one thousand dollars or imprisonment in the county jail for one year, or both penalties. Furthermore, any officer of either corporation or organization who shall wilfully use the power or authority incident to his official position with intention to influence or impel violation will be deemed guilty of a felony and subject to a fine of five thousand dollars or two years in the county jail, or both penalties.[1]

The doctrine of public interest in the Kansas Act is an interesting contribution to the constantly growing concept which has been creeping into legislation. The scope of the legislation is revealed best, probably, by a consideration of section 3*a* of the Act:

> The operation of the following named and indicated employments, industries, public utilities, and common carriers is hereby determined and declared to be affected with a public interest. . . . . (1) the manufacture or preparation of food products whereby, in any stage of the process, substances are being converted, either partially or wholly, from their natural state to a condition to be used as food for human beings; (2) the manufacture of clothing and all manner of wearing apparel in common use by the people of this state whereby, in any stage of the process, natural products are being converted, either partially or wholly, from their natural state to a condition to be used as such clothing and wearing apparel; (3) the mining or production of any substance or material in common use as fuel either for domestic, manufacturing, or transportation purposes; (4) the transportation of all food products and articles or substances entering into wearing apparel, or fuel, as aforesaid, from the place where produced to the place of manufacture or consumption; (5) all public utilities as defined by section 8329, and all common carriers as defined by section 8330 of the General Statutes of Kansas of 1915.

[1] But four formal complaints have been filed with the court in the first six weeks of its organization, all of which have been made by employees. One complaint resulted in the court ordering a general investigation rather than a trial of the specific matter complained of, and the decision will be handed down March 29. No attempt has been made to enforce any penalties under the criminal provision of the Act. To qualify this statement, however, the Act took effect January 24, which was Saturday, and on January 26, 450 miners in the southeastern part of the state went on a strike—at least, the matter was reported as a strike. Prompt action was taken; the attorney-general appeared in the vicinity the next morning with the county attorney of that county and proceeded to issue subpoenas and to make investigations. The miners all went back to work, and those who appeared before the court to testify declared that no strike was intended; they were merely taking an extra holiday because of a hard week's work previous.

Although no specific reference is made to such terms as agriculture or live-stock raising, it is not improbable that the authors of the Act intended to phrase it so these two branches of production would be excluded. The words: (1) the *manufacture* or preparation of food products . . . . (2) the *manufacture* of clothing and all manner of wearing apparel . . . . (3) the *mining* or *production* of any substance or material in *common use as fuel* . . . . (4) the *transportation* of all food products . . . . coupled with such terms as *natural* state and *natural* products, seemingly permit the court to step in only after the wheat is threshed, the wool clipped, and the live stock ready for the market. When the possibilities of restriction in production of agricultural products are considered, following the trail blazed by certain southern cotton growers and tobacco producers, the line seems to be drawn at a questionable place from the standpoint of logic; yet it is wholly natural, perhaps, that the state of Kansas should exempt agriculture and live-stock raising from the doctrine of public interest. There is no reason, however, to believe that this fact will undo the law. Nothing is more commonly recognized than that the legislature does not have to exhaust its constitutional power at one session. It may legislate concerning public utilities supplying water and not those supplying gas, and it is not obliged constitutionally to reform all in order to reform one. Thus the court says: "Regulations for these purposes may press with more or less weight upon one than upon another, but they are designed not to impose unequal or unnecessary restrictions upon anyone but to promote . . . . the general good."[1] In the Kansas Act the fact that no great industrial problem exists in the fields exempted is sufficient to sustain the exemption in the law itself. Of this there can be little doubt.[2]

Aside from an appreciation of the scope of the Act, in order to get a proper perspective for analysis it is necessary to review certain details in connection with the history of the legislation. It

[1] *Barbier* v. *Connolly*, 113 U.S. 27.

[2] *Connolly* v. *Union Sewer Pipe Co.*, 184 U.S. 540, contra; but section 9 of the Act which exempted from its operation agricultural products or live stock in hands of producer was in disadvantageous form. It regulated *all* and then excluded *some*.

is obvious that the Act is colored with the impatient thought of the present post-war period. Indeed, under more tranquil conditions it is difficult to conceive of similar legislation evolving for some time to come. The mining of coal in Kansas has been attended with many strikes, the miners around Pittsburg leading in an exasperating succession of effort none too well defined in purpose or results. The nation-wide bituminous strike brought matters to an issue. The state called for volunteers to mine coal. Guarded by the Fourth Regiment, Kansas National Guards, volunteers proceeded to Pittsburgh and through their efforts and that of other volunteers Crawford, Cherokee, and Linn counties produced about two hundred cars of coal. Later came the settlement of the national strike.

Governor Allen saw an opportunity to clinch matters. A special session of the legislature was called. The members came with determination to make a finished job of it. "The radical labor," the governor states, "headed by representatives of the four railway brotherhoods, swarmed. They tried first their old-fashioned plan of intimidation. They sought to re-enact the tragedy of the Adamson Law. . . . . Then they pleaded. . . . . Then the attorneys for the employers protested . . . . and after that these Kansas legislators passed the bill and went home."[1]

The incident is indeed an example of legislative promptness and decisiveness. One cannot help wishing, however, that the situation had been a little less tense, that there had been a little less of the spirit of settling the matter once and for all. Had the minds of the legislators been somewhat less blunted by the immediate circumstances, it is possible that it might have been clear: (1) that there are limits to the implications which some people find in the doctrine of public interest, for when, as it frequently happens among public utilities, increased wages mean increased rates, the public cannot be impartial; and when difficulty arises between employer and employee, especially when the doctrine of public interest is spread as it is in the Kansas Act, the interest of the public is very distant and indefinite as compared to that of the worker who is fighting for what he considers his very existence;

[1] Article, *Saturday Evening Post*, March 6, 1920.

(2) that American workingmen have had what they consider bitter experience with the courts, and the Act might provoke rather than curb difficulty; and (3) that the proposed court provides for appointment of judges by the governor, who is not bound in any way to make it a truly representative group.[1]

Naturally a law of such extraordinary content has aroused criticism and defense of the most virulent type. Governor Henry J. Allen, who called the legislature in special session to present the bill and who sponsored it throughout the proceedings, fought the criticism of the four railway brotherhoods and other labor groups in his speech on January 5, the opening day of the session, admitting that "from all over the state there is coming a flood of protest from various union bodies" but the critics are those "who are not concerned in this bill, who do not belong to the essential industries affected by it, and who have made absolutely no study of the plan, but who are being urged by professional labor leaders to save the day." Frank P. Walsh, who appeared at the public hearings and led off with a four-hour speech against the measure, calls it "a cat o' nine tails with which the backs of labor may be lashed," a plain violation of the thirteenth amendment prohibiting slavery and involuntary servitude, and Samuel Gompers, in a speech at Trenton, New Jersey, on March 14, states that "Governor Allen will have to reckon with labor if he lives long enough."

Manifestly the Act is contrary to what labor has considered to be its interests. Although the Act permits organization and recognizes it, declares labor has the right to representation in disputes and in court through attorneys or other individuals of its own choosing, and although a declaration is made affirming labor's

[1] It is well to note the degree to which the legislation differs from the suggestions advanced by the recent Industrial Conference called by President Wilson. No machinery is created to further conciliation, to stimulate co-operation. Nor is there any provision for one member to represent capital, another labor, and a third the public. The court is composed of three men appointed by the governor, the theory being that they represent the entire public. These three men at the present time are W. L. Huggins, of Emporia, one of the writers of the Act, a lawyer by profession, with some experience on the Public Utilities Commission of the state; Clyde M. Reed, formerly a railroad mail superintendent and at present editor of the *Parsons Sun;* and George N. Wark, a graduate of the Kansas Law School, who organized a company in his home town in Caney, later went to France, and was cited for bravery in action in the Argonne.

right to a fair wage and decent conditions, and although the court does not interfere except where disagreements affect production and transportation, still these concessions have not reconciled labor, ordinarily, to the degree that labor has felt it could give up the right to strike. The experience in this country, the history of legislation in England leading up to the British Industrial Disputes Act of 1906, which places no limitation upon the strike, the Canadian Industrial Disputes Act, which makes provision for certain strikes to be called legal and has not prevented many illegal ones, and the checkered history of compulsory arbitration systems, do not suggest that Kansas has a substitute for strikes, or that striking may not be an excellent thing to recognize on certain occasions. These facts, coupled with an unfortunate failure to assure the worker that someone truly represents his interest, do not augur well for the Kansas experiment.

Yet too broad generalizations must not be made. Kansas is not a manufacturing but an agricultural state. Labor, on the whole, is weak. There is relatively little feeling of class cleavage. Although in the neighborhood of Pittsburg some tense feeling has existed among the miners, labor problems have been slow to grow. Barring action by the brotherhoods or other outside labor to test the Act, there is reason to think, therefore, that the plan may encounter a certain degree of success. Labor in Kansas seemingly has something to gain and little to lose from the Act.

No one will attempt, of course, to forecast the results of a sympathetic strike if led by the United Mine Workers or the four railroad brotherhoods of neighboring states. The essentially interstate character of transportation would make the situation a very difficult one for the Court of Industrial Relations to control. Likewise, it is unsafe to prophesy what the United Mine Workers may do. According to Kansas City press dispatches, Kansas miners meeting in Missouri on March 9 passed a resolution pledging to Alexander Howat, president of district No. 10, their support "at any time he may see fit to call a strike," and on March 12 adopted an amendment to their constitution placing a fine of fifty dollars upon any member who appeals to the Industrial Court over the heads of district officials, and a fine of five thousand dollars upon any district official who appeals a case.

Further uncertainties as to the success of the Kansas Act are introduced by the imperfect consideration of past experience, due possibly to the haste with which the Act was written. On the whole the Act is strong, exceptionally so; but there are some weaknesses in drafting. Thus section 12, for instance, provides:

> . . . . In case of such proceedings in the Supreme Court by either party, the evidence produced before said Court of Industrial Relations *may* be considered by the said Supreme Court, but said Supreme Court, if it deem further evidence necessary to enable it to render a just and proper judgment, *may admit such additional evidence* in open court or order it to be taken and transcribed by a master or commissioner. . . . .

If the Supreme Court refuses, as it may under the provisions of the Act, to accept as final the evidence before the Court of Industrial Relations and reopens the case to new evidence, the history of the experience of the Interstate Commerce Commission with the United States courts prior to 1906[1] may be repeated, wherein both shipper and railroad "came to regard the proceedings before the Commission as merely a formality to be observed prior to conclusive adjudication of the matter by the courts,"[2] and the Commission, compelled to render a decision upon imperfect evidence, was liable to a review upon the basis of entirely new testimony. In the end this means not only duplication of effort, but it means that a court of law, not an administrative body, ill equipped to secure information on the multifluid aspects of industry, becomes the real governing body. It is possible that if the Supreme Court of the United States had had as much confidence in the Interstate Commerce Commission in 1888 when the first appeal was made as it has today, it would not have started proceedings *de novo*.[3] The Supreme Court of the state of Kansas may not repeat this history; the Act is weak, however, in not foreseeing and providing against the possibility.

In reading the Act the query in the minds of many will be: What of its constitutionality? An examination of the Act discloses any number of places where it may be placed in jeopardy

[1] The law of 1906 amended section 15 of the Act to Regulate Commerce of 1887.

[2] Ripley, *Railroad Rates and Regulation*, p. 462.

[3] Kentucky and Indiana Bridge Case, 37 Federal Reporter 567.

if the right kind of a case can secure a hearing before the Supreme Court of the United States. Consider a part of article *a*, section 3, already given in full. The industries declared to be affected with a public interest are:

> 1. The manufacture or preparation of food products whereby, in any stage of the process, substances are being converted either partially or wholly, from their natural state to a condition to be used as food for human beings.
>
> 2. The manufacture of clothing and all manner of wearing apparel in common use by the people. . . . .
>
> 3. The mining or production of any substance or material in common use as fuel. . . . .

It will be noted that clothing, wearing apparel, and fuel have the qualification "common use," while food has not. By implication, then, it would seem that the doctrine is unrestricted in the field of food manufacture and preparation and that the making of ice cream and salad oil in Kansas is impressed with a public interest. Nor is this all. Clause 2 extends the doctrine to the manufacture of clothing and all manner of wearing apparel in common use by the people. If the people of Kansas wear neckties, the doctrine attaches to neckties also.

It is commonly recognized, of course, that no state law can interfere arbitrarily with private business, and the mere fact that this law declares such items as have been mentioned to be subject to the supervision of the state for the purpose of guarding relationships "directly affecting the living conditions of the people of the state" does not close the matter. A reasonable relationship must be shown.

These illustrations disclose the all-inclusive nature of the Act, which is unfortunate in one respect, at least, that it makes possible appeal on the most trivial of cases. Under the Act it would seem possible to appeal case after case to the Industrial Court on the most flimsy of grounds, although it is true that the court has some discretion in determining whether it will take the matter up for review and investigation. Suppose, however, ten boys delivering packages for a large retail store should appeal to the court for higher wages, and an increase of ten cents an hour is granted. If appealed to the Supreme Court it is possible that there would be

those who would hold the law to be a genuine experiment to solve a real industrial problem and would rule that it cannot be said to be arbitrary and unreasonable. The degree to which certain so-called rights are being subjected to conceptions of public policy is well illustrated in the following:

> . . . . The placing wholly on the employer of the financial risk of injury through conditions of the industry is no more unreasonable than the rule of the common law which placed it wholly on the employee.
>
> . . . . If a business is unsuccessful, it means that the public does not care enough to make it pay. If it is successful, the public pays its expenses and something more. It is reasonable that the public should pay the whole cost of producing what it wants, and a part of that cost is the pain and mutilation incident to production. By throwing the loss upon the employer in the first instance we throw it upon the public (but only those who consume the particular goods burdened) in the long run, and that is just.[1]

Yet the doctrine of public policy is not without limits and the court is in a position to quote, if it sees fit, decision after decision to the effect that the Act violates constitutional guaranties clearly, unmistakably.

There is no reason, however, to think that the present Act will not be amended from time to time as experience points out its imperfections; nor is there reason to believe that if it is declared unconstitutional, no further attempt will be made to bring legislation more actively to bear upon problems of labor and production. It is not possible to conceive of the present Act as anything but a first step; whether in the right or wrong direction is not yet wholly clear. There are possibilities in it. At least, if it is in the wrong direction, the experiment will confirm somewhat the views of those who believe that, though the field is a proper one for legislation, the approach ordinarily should not be with the idea of taking away the right to strike from labor or the right to lockout from the employer, but with the idea of equalizing the situation, of removing confusion and uncertainty as to the status of the law, and of placing emphasis upon mediation and conciliation, through providing machinery for facilitating such achievements.

[1] *Arizona Copper Company* v. *Hammer* (1919), 39 Sup. Ct. 553.

Justice McKenna (minority) puts the opposing issue with equal clarity: "There is, I think, menace in the present judgment to all rights, *subjecting them unreservedly to conceptions of public policy*. . . . ." It is the fight of a man with his back to the wall, appreciating that he is representing a losing concept.

ADDENDUM

Since this article was placed in type, the first decision of the Court of Industrial Relations which was handed down March 29 has been received. The complainants were the State of Kansas on the relation of Richard J. Hopkins, attorney-general, W. J. Price *et al.*, and the respondents, the Topeka Edison Company, which markets electric current for heating, lighting, and street-car service in the cities of Topeka and Oakland, Kansas. Although the complaint originated with the attorney-general, speaking for local union number 840, which has a membership of approximately forty, the Topeka Edison Company, in its reply submitted the issue and welcomed "the good offices of the court in a judicial determination of that which is equitable and just." The controversy became, therefore, for all practical purposes, a voluntary submission by common agreement of the dispute between the parties.

In determining the proper wage to be given, the court took into consideration the factors written into the recent railroad legislation by the Congress of the United States. They were: (1) the scales of wages paid for similar kinds of work in other industries; (2) the relation between wages and the cost of living; (3) the hazards of the employment; (4) the training and skill required; (5) the degree of responsibility; (6) the character and regularity of the employment; (7) inequalities of increases in wages or of treatment, the result of previous wage orders or adjustments. To these the court added another item, namely: (8) the skill, industry, and fidelity of the individual employee. The purpose of the last item was to take into consideration the almost universal complaint of inefficiency and lower production in the various lines of industry.

In the opinion of the court, which is written by Judge Huggins and assented to by his associates, the following argument was brought forth:

"The evidence in this case is very voluminous and covers a wide range of facts and conditions. There is very little conflict in it. The evidence shows conclusively that the workers who are represented by the individual complainants are skilled workers; that they have been employed, in most cases, by the respondent for a considerable length of time; that they have had sufficient experience and have acquired sufficient skill to be called "first-class" workers. The work in which they are engaged is hazardous, owing to the fact that they are compelled, at times, to handle wires carrying 2,300 volts of electric current. One death has occurred in recent years and several serious accidents have taken place caused by workers coming in contact with "hot" wires. The evidence shows that many life insurance companies refuse to insure workers engaged in this line of work, and that many others, although accepting the risk, require a larger premium. The evidence also shows that it takes from three to four years' study and experience to fit persons to become first-class linemen.

"For several years prior to 1916 workers of this class employed by the respondent were paid a daily wage of $2.75. In 1916 the wage was increased to $90 per month on the basis of a 26-day month and a nine-hour day. In

May, 1919, another increase was granted whereby these workers received sixty cents per hour for a basic day of eight hours, with time and a half for overtime and double time for Sunday work.

"A controversy has recently existed between the respondent and the employees in regard to the eight-hour day. It seems that the employees are required usually to report for work at the storehouse of the respondent, where they gather up their tools and such material as they may need to use for the day's work, place it upon a truck, and proceed to the location upon the lines of the respondent at which they are to begin work for the day. Heretofore, time has begun when the men arrived at the point on the respondent's lines at which they were to begin work, and they have not been paid for the time which they spent in the storehouse collecting their material and tools, or for the time spent on the way from the storehouse to the job. During the progress of the trial, however, the workers agreed to share equally with the company the time spent within, or in going to and from, the storehouse—the men to have credit for "two ways" and the company to have credit for "two ways." This proposition, in open court, was accepted by the respondent's manager and is therefore no longer a matter of controversy. The fairness of the proposition appeals to the court.

"Prior to the year 1919, the workers were able to live and support their families reasonably upon the wage which they received. The evidence clearly shows what is a matter of common knowledge—that the cost of living has increased to an enormous extent and that a considerable increase has occurred within the past year. Speaking approximately, the price of food had increased by November, 1919, over November, 1913, 100 per cent; clothing, 155 per cent; and furniture and furnishings, 156 per cent. The evidence also shows that decently habitable houses in the city of Topeka rent for from 30 per cent to 50 per cent more than they did a few years ago. It is only fair, however, to state that the evidence shows a slight decrease in the price of some food products within the last month or six weeks, and it is hoped that there will be a further decline in these unprecedented and exorbitant prices.

"While the scale of wages for this kind of mechanical work at Topeka is only $4.80, at Wichita and Kansas City, Kansas, it is $6 per day. The same class of work in the building trades in Topeka is $7 per day and at other places somewhat higher than that. The evidence shows, however, that while the employment of these outside linemen is practically continuous, the inside or building tradesmen are engaged in work which is more or less seasonal in its character and not continuous. The outside linemen—first-class men, such as the complainants—at Abilene get 60 cents per hour; at Leavenworth, $90 per month; at Lawrence, 42 cents per hour; at Manhattan, $110 per month; at Junction City, 42 cents per hour; at Pittsburg, 60 cents per hour; at Atchison, 60 cents per hour. These are smaller towns where fewer men are employed and are probably not as comparable with Topeka as are Wichita and Kansas City, both of which are approximately the same-sized town as Topeka.

"A living wage may be defined as a wage which enables the worker to supply himself and those absolutely dependent upon him with sufficient food to maintain life and health; with a shelter from the inclemencies of the weather; with sufficient clothing to preserve the body from the cold and to enable persons to mingle among their fellows in such ways as may be necessary in the preservation of life. But it is not a living wage only which this court is commanded by the people of this state to assure workers engaged in these essential industries. The statute uses the word "fair" and commands us to assure to these workers a "fair" wage. What is a fair wage? Upon this subject, of course, there may be a great variety of opinions expressed. It seems safe to say, however, that the circumstances enumerated above should be considered in arriving at a conclusion as to what constitutes a fair wage. The skilled worker, in fairness, should have a higher wage than the unskilled worker. The worker who has spent years of time and effort in preparing himself for a peculiarly technical line of work is entitled to greater consideration from the public than the more unskilled worker. The hazards of the employment should also be noted and the worker engaged in such an employment as that under consideration should receive a higher wage than his fellow who may be engaged in a safe occupation. The degree of responsibility placed upon the worker is a matter of importance. The continuity and regularity of the employment should be considered, for it is apparent that an employment which is seasonal in its nature must have a higher wage than one in which regular, steady work is offered, because, after all, it is the annual earnings that are to govern rather than the daily wage, in many instances. By no means the least important consideration should be the industry and fidelity of the individual, for the worker who is faithful to his trust and is industrious, working to the best of his ability in the interest of his employer, is entitled, as a matter of right, to a greater reward than the worker who thinks only of his wage and not of the interest of his employer and of the public who are directly affected by his labors. Perhaps more important than any other circumstance, however, is the relation of the wage to the cost of living.

"In view of all the matters heretofore stated, the court finds that the agreement made in open court with regard to a division between the complainants and the respondent of the time taken at the storehouse, and between there and the job, is a fair and reasonable practice and regulation and should be enforced as stated herein. The court further finds that the wage paid by the respondent to the complainants is unreasonably low and is not a fair wage to be paid to these complainants and other workers similarly situated and employed by the respondent because of the present unprecedented cost of living and other facts and conditions herein stated; and that a fair minimum wage to be paid the complainants and others similarly situated and employed by the respondent at this time is $67\frac{1}{2}$ cents per hour on the basis of an eight-hour day, time and a half for overtime, and double time for Sundays. The court further finds that said rules and practices and such minimum wage

should be instituted on the first of the ensuing calendar month and should continue for a period of six months thereafter unless changed by agreement of the parties with the approval of the court."

The decision of the court disclosing the great difference in wages paid in different localities to linemen suggests possibilities for those engaged in similar work who are below the wage-level awarded. It seems probable that other linemen will have their day in court. As different cases come up similar follow-the-leader tactics may ensue, driving toward standardization—possibly a wholly desirable result. Private businesses, however, are likely to react somewhat differently from public utilities. Their so-called rights have been less restricted and they cannot put forward pressure for increased returns as public utilities can for increased rates. Net profits may fall.

Moreover, the right of capital to a fair return and the right of the worker to a fair wage are recognized. There are probably some industries which cannot pay a fair wage and continue to meet competition. What if both a fair return to capital and a fair wage to the worker are not possible?

The court has several problems to study. What is a fair wage? Is it, as labor says it is, in court application, the average wage paid for similar work in other communities, or does it recognize, as a working hypothesis, the right of the worker to a rising standard of living?

What is a living wage? Does it presuppose that the man should have a family? Will it take a family of five as a model, three children to replace population and permit a slight increase? If three children, will it allow for three under working age? Not one in seven families conforms to this standard, yet most families pass through it at some stage. Should the mother and children be free from outside work? Will the level be high enough to permit schooling? some recreation? insurance? etc. There is no end to the questions which might be asked; nor are these questions either new or confined to Kansas alone. They are commonplace. The only uniqueness lies in the fact that the Court of Industrial Relations, following compulsory arbitration which aims to forbid industrial strife and protect the public, carries with it an obligation to seek the answer to problems which are legion.

The present decision is not wholly clean-cut upon these matters; it is not to be expected. They are exceedingly minute, elusive; and standardization has some disadvantages. Governor Allen has pointed out that when employer and employee get together to settle matters after a strike, or even before, the agreement is commonly a compromise and hence not a basis for justice or future peace. Have we a more definite basis or working principle to guide the instrument he has sponsored, the Kansas Court of Industrial Relations, than the judicious use of the spirit of compromise?

WILLARD E. ATKINS

UNIVERSITY OF CHICAGO